



THE CITY OF KEY WEST
PLANNING BOARD
Staff Report

To: Chairman and Planning Board Members

Through: Katie P. Halloran, Planning Director

From: Melissa Paul-Leto, Planner 1

Meeting Date: August 19, 2021

Agenda Item: **Text Amendment of the Comprehensive Plan** – A Resolution of the City of Key West Planning Board recommending an Ordinance to the City Commission to comply with State of Florida Statute 163.3177(6)(i)1., by creating a new Comprehensive Plan element entitled, “Chapter 10, Property Rights Element”, and Goal 10-1, Objective 10-1.1, and Policies 10-1.1.1 – 10-1.1.4; Pursuant to Chapter 90, Article VI, Division 3; Providing for severability; Providing for repeal of inconsistent provisions; Providing for an effective date.

Request: To create a new Comprehensive Plan element entitled, “Chapter 10, Property Rights element”, and Goal 10-1, Objective 10-1.1, and Policies 10-1.1.1 – 10-1.1.4.

Applicant: City of Key West

Background:

The proposed text amendment is proposed to comply with State of Florida Statute 163.3177(6)(i)1., and to emphasize the importance of property rights and public participation. The property rights element also meets the applicable standards of the Community Planning Act. By including this element, our city will affirm its support for the rights of all people to participate in the planning decisions through transparency, predictability, and reliability. The city’s policies affect how one participates in the planning decisions we make, their lives and the properties of property owners, businesses, and real estate investors within the City of Key West. The goal

Section 163.3177(6)(i)2. Florida Statutes (Chapter 2021-195, Laws of Florida) requires a local government to adopt and include the property rights element in its comprehensive plan for any proposed plan amendment initiated after July 1, 2021. A proposed comprehensive plan amendment is initiated on the date the amendment is first considered at a public hearing, as outlined in Section 163.3174(4), Florida Statutes, held by the local planning agency.

If the local government’s local planning agency conducted a hearing on a comprehensive plan amendment on or before July 1, 2021, the local government may complete the adoption process for that comprehensive plan amendment package in accordance with the process set forth in Chapter 163, Florida Statutes. If the comprehensive plan amendment had been first considered at a local planning agency’s hearing on or after July 2, 2021, then Section 163.3177(6)(i), Florida Statutes, requires the local

government to also adopt the property rights element into its comprehensive plan on the date of adoption of that next proposed amendment.

As listed in Section 163.3177(6)(i), Florida Statutes, a local government may adopt its own property rights element or use the following statement of rights:

The following rights shall be considered in local decision making:

1. The right of a property owner to physically possess and control his or her interests in the property, including easements, leases, or mineral rights.
2. The right of a property owner to use, maintain, develop, and improve his or her property for personal use or for the use of any other person, subject to state law and ordinances.
3. The right of the property owner to privacy and to exclude others from the property to protect the owner's possessions and property.
4. The right of a property owner to dispose of his or her property through sale and gift.

Request / Proposed Text Amendment to add new language and a new element, Chapter 10, to the Comprehensive Plan:

Goal 10-1 The City of Key West will make planning and development decisions with respect for property rights and with respect for people's rights to participate in decisions that affect their lives and property.

Objective 10-1.1. The City of Key West will respect judicially acknowledged and constitutionally protected private property rights.

Policy 10-1.1.1 The City of Key West will consider in its decision-making the right of a property owner to physically possess and control his or her interests in the property, including easements, leases, or mineral rights.

Policy 10-1.1.2 The City of Key West will consider in its decision-making the right of a property owner to maintain, develop, and improve his or her property for personal use or for the use of any other person, subject to state law and local ordinances.

Policy 10-1.1.3 The City of Key West will consider in its decision-making the right of the property owner to privacy and to exclude others from the property to protect the owner's possessions and property.

Policy 10-1.1.4 The City of Key west will consider in its decision-making the right of a property owner to dispose of his or her property through the sale or gift.

Text Amendment of the Comprehensive Plan Process:

Planning Board Meeting:	August 19, 2021
City Commission:	TBD
DEO Review:	TBD
City Commission (2nd Reading / Adoption):	TBD
Local Appeal Period:	30 days
Render to DEO:	10 working days
DEO Notice of Intent (NOI):	Effective when NOI posted to DEO

Analysis:

The City of Key West is processing the aforementioned Comprehensive Plan amendments to comply with recent changes to State statutes which now require a Property Rights Element.

The purpose of Chapter 90, Article VI, Division 2 of the Land Development Regulations (the "LDRs") of the Code of Ordinances (the "Code") of the City of Key West, Florida (the "City") is to provide a means for changing the text of the Land Development Regulations. It is not intended to relieve particular hardships nor to confer special privileges or rights on any person, but only to make necessary adjustments in light of changed conditions. In determining whether to grant a requested amendment, the Planning Board and the City Commission shall consider, in addition to the factors set forth in this subdivision, the consistency of the proposed amendment with the intent of the Comprehensive Plan.

Criteria for Approving Amendments to the Comprehensive Plan pursuant to Code Section 90-554 (6) Justification. The need and justification for the proposed change. The evaluation shall address but shall not be limited to the following issues:

a. Comprehensive plan consistency. Identifying impacts of the proposed change in the comprehensive plan future land use map on the overall purpose of the comprehensive plan and consistency with applicable policies within the comprehensive plan.

Not applicable: this amendment will not impact or amend the future land use map.

b. Impact on surrounding properties and infrastructure. The effect of the change, if any, on the particular property and all surrounding properties. Identify potential land use incompatibility and impacts on infrastructure.

These amendments are not associated with a specific property, conversely, the proposed amendments simply provide additional language establishing the rights of private property owners and the related to their real property within the City of Key West. There are no impacts on infrastructure or land use incompatibilities.

c. Avoidance of special treatment. The proposed change shall not:

1. Single out a small piece of land and confer special and privileged treatment not provided to abutting properties with similar characteristics and land use relationships; and

The proposed amendments do not single out small pieces of land or confer special privileges.

2. Provide for land use activities which are not in the overall public interest but only for the benefit of the landowner.

The proposed amendments are required by State law and are intended to benefit all private property owners.

d. Undeveloped land with similar comprehensive plan future land use map designation. The amount of undeveloped land in the general area and in the city having the same zoning classification as that requested shall be stated.

The proposed amendment applies to all property within the jurisdiction of the City of Key West.

RECOMMENDATION:

The Planning Department based on the criteria established by the Comprehensive Plan and Land Development Regulations recommends to the Planning Board that the request for text amendment to the Comprehensive Plan be **APPROVED**.